IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

F.A.O. Nos. 61 & 332 of 2004

Judgment reserved on:31.8.2007

Date of decision:14th September, 2007

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1. FAO No. 61 of 2004

Reshma Kumari **Appellant**

Versus

H.R.T.C. and others **Respondents**

Mr. Sanjeev Kuthiala, counsel for the appellant

Mr. H.S.Rawat, counsel for respondents No. 1 & 2.

Ms.Meenakshi Pathania, counsel for the driver.

2. FAO No. 332 of 2004

H.R.T.C. and another **Appellants**

Versus

Reshma Kumar and another **Respondents**

Mr. H.S.Rawat, counsel for the appellants

Mr. Sanjeev Kuthiala, counsel for respondent No.1.

Ms.Meenakshi Pathania, counsel for the driver

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The Hon'ble Mr. Justice Deepak Gupta, Judge.

Whether approved for reporting?[1]

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[1] ***Whether the reporters of the local papers may be allowed to see the Judgment?***

Deepak Gupta, J.

By this judgment two FAOs are being disposed of since they arise out of the same accident.

Admitted facts of the case are that appellant, Reshma Kumari was traveling in bus No. HP-12-4000 from Ramshehar to Mahadev. At about 1.30 p.m. when she was alighting from the bus, she fell down and sustained multiple injuries including fracture of both hip joints. The appellant remained under treatment at P.G.I., Chandigarh and has suffered permanent disablement. The appellant filed a claim petition claiming compensation and the learned M.A.C.T. has partly allowed the claim petition and has awarded a sum of Rs. 1,66,160/- in favour of the appellant. The learned tribunal has come to the conclusion that the accident occurred due to the negligence of the claimant since she jumped out of the moving bus. However, following the judgment of the Apex Court in **S.Kaushnuma Begum and others Vs. The New India Assurance Company Ltd. AIR 2001 SC 485,** it held the Insurance Company liable. Thereafter he has assessed the total compensation at Rs. 4,15,400/-. The MACT has then held that since the petitioner herself contributed to the negligence, she was only entitled to

40% of the compensation and awarded her Rs 1,61,160/-. This award has been challenged both, by the appellant Reshma Devi as well as by the H.R.T.C.

I have heard Mr. Sanjeev Kuthiala, learned counsel for the appellant-claimant and Mr. H.S.Rawat, learned counsel for the H.R.T.C.

The award, to say the least, makes a very little sense. The learned M.A.C.T. has neither understood the concept of negligence nor has he assessed the compensation in accordance with the well settled principle relating to grant of compensation. The case of the petitioner is that when she was getting down from the bus, the driver of the bus suddenly started the bus as a result of which she fell down. She was taken to the hospital and, therefore, the report was not lodged to the police. The learned tribunal has placed great emphasis on the fact that the complainant failed to lodge police report and, therefore, her version must be untrue. The lodging of police report at best will only prove that the accident had happened. The contents of the FIR cannot be used to hold any party negligent for the accident. Merely because FIR was not lodged does not indicate that the case set up by the petitioner is false. The finding of the tribunal that

the petitioner was herself negligent is contradictory to his own finding that she was guilty of contributory negligence while assessing the compensation.

In any event, there is a DDR report entered in the roznamcha with regard to the accident. This is report No. 16, dated 5.9.2000. The driver of the bus while appearing in the witness box has admitted that this DDR was lodged at his instance. Therefore, the factum of the accident stands proved. The learned trial court has relied upon the version given in the DDR in which it is reported by the Head Constable that he had inquired from the claimant about the cause of accident and she had stated that the accident occurred due to her own fault. No reliance can be placed on this statement. No statement of Reshma Devi has been proved on record. Nothing has been shown to indicate whether any statement was actually recorded or not. Further, the driver has admitted that this DDR was lodged at his instance. This is a totally self serving statement and cannot be used against the claimant. It would be pertinent to mention that when the petitioner stepped into the witness box, no suggestion was put to her that she had made such a statement. On the other hand, the petitioner has stepped into witness

box to state that the bus had stopped and when she wanted to alight from the bus, the driver suddenly started the bus as a result of which she fell down and suffered injuries. Her version is supported by PW-4 Ram Kishan, who has witnessed the accident. On behalf of the respondents, the only witness examined is the driver, who has stated that the petitioner suddenly jumped out from the bus without informing him or the conductor. Neither the conductor nor any passenger travelling in the bus was examined. The driver has admitted that at the bus stop at Mahadev, some other passengers also got down from the bus. If that be true why should the petitioner jump off the moving bus. He has also admitted that there was a person from the village of the petitioner who was traveling in the bus.

Keeping in view the entire facts it stands proved that the bus had stopped at Mahadev. Some passengers were getting down from the bus and appellant Reshma Devi was in the process of getting down from the bus when the bus driver rashly and negligently started the bus with the result that the appellant fell down.

As far as quantum is concerned, the petitioner has suffered a number of fractures. Unfortunately the

petitioner has not examined proper evidence in this behalf. PW-1 Dr. Anil Kumar, who has been examined by her has proved the disability certificate which shows that she has suffered 75% disability to her left leg due to fracture of pelvis. He also stated that there will be foot drop, meaning thereby that there is likelihood to be a limp in her gait. The petitioner has placed and proved on record evidence to prove that her parents have spent about Rs. 40,000/- on her treatment including medicines and hospital charges.

The petitioner was a student of 10+1 when the accident took place. She remained admitted in P.G.I., Chandigarh for about 20 days and remained under treatment as an outdoor patient for almost 2 years at P.G.I., Chandigarh, as is apparent from Ex.PW-3/A. The petitioner is, therefore, awarded the following amounts :-

Medical & Hospitalization expenses

As already stated above, the petitioner vide Ex.P-1 to P-55, has proved expenses of about Rs.40,000/-. These includes expenses of hospital, Sarai etc. However, there are other expenses such as expenditure on food etc. during the period of her hospitalization which has not been taken into

consideration. Therefore, I assess her total medical expenses at Rs. 50,000/-.

Attendance and Transportation

The petitioner while she remained admitted in the hospital must have been looked after by her relatives who would have had to go to the hospital at Chandigarh from her village to look after her. They must have also spent time and money on their boarding and lodging. Keeping in view the period of her hospitalization which was 20 days, it would not be unreasonable to award her Rs. 15,000/- for attendant and transportation charges.

Pain and Suffering

The petitioner has been awarded Rs. 25,000/- by the learned tribunal for pain and suffering. In my opinion, since the petitioner remained in hospital for 20 days and thereafter remained outdoor patient under treatment for almost 2 years, it would be just and reasonable to award her Rs.50,000/- under this head.

Loss of amenities of life.

The learned tribunal has awarded Rs.80,000/- under this head. I am of the opinion that keeping in view the facts that the petitioner has to permanently walk with a limp, she is disabled to 75% for her entire life and her

marital prospects are also likely to be affected by the injury suffered by her, it would be appropriate to award her Rs. 1,00,000/- under the head of loss of amenities of life and loss of marital prospects.

Loss of income

The learned tribunal has assessed the loss of the deceased at Rs.1200/- per month or Rs. 14,400/- per year and after applying multiplier of 16 the learned tribunal has awarded a sum of Rs. 2,30,400/- under this head. This assessment, in my opinion, is not based on any material or evidence. The petitioner was a student of 10+1. She was not earning. Her future earnings can only be assessed by way of guess work. The learned tribunal also lost sight of the fact that the disability of 75% suffered by the petitioner was in respect of one leg and not in respect of the entire body. Therefore, in my opinion, he has wrongly assessed the loss at Rs. 1200/- per month. In the absence of any cogent and reliable evidence I am of the view that if the future income of the deceased is taken at Rs. 2,000/- per month. Her loss of income is assessed at 25%, i.e. Rs.500/- per month which comes to Rs. 6,000/- per year. Applying the multiplier of

18, the petitioner is entitled to Rs. 1,08,000/- on this account.

In view of the above discussion the petitioner is held entitled to a total amount of Rs. 3,23,000/-. The petitioner shall also be entitled to interest on this amount @ 7.5% per annum from the date of filing of the claim petition i.e. 13.11.2001 till payment/deposit. The H.R.T.C. is directed to deposit the enhanced amount after making adjustments of the amounts already paid/deposited within eight weeks from today. The appeals are disposed of in the aforesaid terms. No costs.

September 14, 2007(K) (Deepak Gupta), J.